

Before Alok Singh, J.

RAM KISHAN GUPTA AND OTHERS,—Petitioners

versus

STATE OF HARYANA & ANOTHER,—Respondents

CWP No. 6989 of 1990

26th May, 2010

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4 & 6—Petitioners raising constructions on plots—Plots sought to be acquired for public purpose—Classification of land into 3 categories—Land of some similarly situated persons released from acquisition—Action of respondents is arbitrary, unjust and discriminatory—No opportunity of hearing afforded to petitioners—Violates object of Ss. 5-A and 6 of 1894 Act—Petition allowed, notifications under sections 4 & 6 quashed.

Held. that undisputedly over most part of the land which was proposed to be acquired under Section 4 of the Act several constructions were standing at the time of notification issued under Section 4 of the Act, sparing the land whereupon 'A' type constructions are standing and acquiring the land where 'B' and 'C' type constructions are standing itself is in violation of the Article 14 of the Constitution of India. Action of the State Government is arbitrary, unjust and discriminatory.

(Para 13)

Further held. that action on the part of Comptroller Town and Country Planning and Hon'ble Deputy Chief Minister while accepting the recommendation of the Land Acquisition Officer was totally irresponsible and in violation of the object of Sections 5-A and 6 of the Act. If State wants to deprive a citizen from his property then due process of law should be adhered to. This Court is conscious about the fact that while recording satisfaction on the report or the recommendation of the Land Acquisition Collector, no reasoning is required to be given, however, record must show that proper mind was applied by the appropriate Government before accepting the recommendation which is lacking in the present case. It is

important to mention herein that notification under section 4 of the Act was issued on 8th March, 1989 and notification under Section 6 of the Act was issued on 7th March, 1990 i.e. on the last date of limitation. Order dated 5th March, 1990 also reveals that because limitation to issue Section 6 notification was going to expire, hence, hasty decision was taken thereon by making self contradictory observations.

(Para 21)

C.B. Goel, Advocate, for the petitioners.

Deepak Girotra, A.A.G, Haryana.

Suresh Chahal, Land Acquisition Collector, present in person.

ALOK SINGH, J. (ORAL)

(1) By way of present petition, petitioners seek to invoke jurisdiction of this Court under Article 226 of the Constitution of India, assailing notifications dated 8th March, 1989 (Annexure P-2) and 7th March, 1990 (Annexure P-3) under Sections 4 & 6 of the Land Acquisition Act respectively.

(2) Brief facts of the present case are that petitioners No. 1 to 3 are the owners of plot measuring 800 sq. meters comprising in Khasra No. 1142/1 in the Revenue Estate of Gurgaon Hadbast No. 55 at Pataudi Road within the municipal limits of Gurgaon ; the said plot was purchased by petitioners No. 1 to 3,—*vide* registered sale deed dated 15th June, 1979 and mutation No. 7626 was sanctioned in their favour ; the plot abuts to Gurgaon Pataudi Road and is surrounded by shops and houses ; the petitioners No. 1 to 3 have constructed a building, some part of which is rented out to Hari Udyog and the remaining portion of the building is being used by petitioners No. 1 to 3 ; Petitioners No. 4 to 6 are owners in possession of area comprised in Rect. No. 4 Killa No. 1, 10/1 Rect. No. 5 Killa No. 12/1/2/2 Rect. No. 10 Killa No. 2, 3/1, 8, 9 ; the entire property of the petitioners No. 4 to 6 is surrounded by constructed houses ; petitioners No. 7 to 10 are owners of khasra No. 4/27/2/2 measuring 1833 sq. yards whereupon petitioners No. 7 to 10 have raised constructions and they have no other residential accommodation in Urban area ; the plot of the petitioners is within the Municipal Limits, Gurgaon ; petitioner No. 11 purchased plot No. 60 measuring 100 sq.

yards, which is a part of khasra No. 27 and is situated within the Revenue Estate of Gurgaon on Kadipur Basai Road and this plot was purchased,—*vide* registered sale deed dated 7th February, 1985 and thereafter construction was raised where the factory is already working and the petitioner is earning his revenue ; petitioners have raised construction on their plots and is surrounded by all developed colonies ; the State Government,—*vide* notification dated 8th March, 1989 issued under section 4 of the Land Acquisition Act, 1894 (for brevity 'the Act') sought to acquire the land for the public purpose namely for the development and utilization of the land for residential and commercial area, Sector 9, 9-A and 10 at Gurgaon ; there has been no publicity of the notification issued under section 4 of the Act in the locality/llaka, still on coming to know of the issuance of the said notification, the petitioners filed their respective objections before the Land Acquisition Collector, Urban Estate, Sector 17, Gurgaon, *inter alia* on the ground that they have raised constructions on the said plots and that huge amount has been spent on the construction ; it may kindly be exempted from the acquisition ; no hearing whatsoever of the objections filed under Section 5-A of the Act was afforded although opportunity of hearing is mandatory in law ; pick and choose method has been adopted by the authorities, while issuing the notification under Section 6 of the Act and the authorities released the land of the person, who could appease the authorities, whereas the petitioners, who are the holders of small residential plots/house and could not appease the authorities, are made to suffer ; the authorities have released some of the vacant plot and some of the houses constructed after the issuance of the notification under Section 6 of the Act, although the petitioners also fall in the same category, with the persons, whose property has been released from the acquisition ; the case of the petitioners is, in fact at par with that of the persons, whose land has been released from the acquisition, rather the case of the petitioners stands on better footing viz-a-viz the property which has been exempted from the acquisition ; the respondents issued a notification under Section 6 of the Act finally acquiring the land of the petitioners ; no survey of the area has been done in accordance with the procedure for the acquisition of the land, as laid down in the Financial Commissioner's standing orders No. 28 before taking a final decision in the notification issued under section 4 of the Act and before issuance of the notification under Section 6 of the Act ; the Government could not include the land of the petitioners, as there was construction and

the land was sandwich between the other residential houses ; provisions of the Act is invoked by depriving the persons of the land on which, they have built up their houses and are residing therein with their families for the purpose of the development and utilization of the land for providing plots to other persons ; the State Government preferred one citizen over the other, in the matter of providing plots from residential and industrial purposes ; the owners of the land were deprived of their residential houses/plots ; learned Collector before submitting the recommendation as required under Section 5-A did not maintain the record and did not record his satisfaction ; State Government without satisfying itself on the recommendation of the Land Acquisition Officer issued notification under Section 6 of the Act ; no satisfaction is recorded before issuance of the notification under Section 6 of the Act.

(3) Respondents have contested the writ petition by way of filing a written statement. The main contention of the respondents is that before issuance of the notification u/s 6 of the Act Section 5-A of the Act was duly complied with ; Report of the learned Land Acquisition Collector was duly considered before forming opinion of acquiring the land.

(4) I have heard learned Counsel for the parties and perused the record.

(5) Learned Counsel for the petitioners vehemently argued that after the notification under Section 4 of the Act it was incumbent on the part of the Land Acquisition Officer to grant sufficient opportunity to the petitioners to file their objections under Section 5-A of the Act and thereafter to inform the petitioner for the actual date of hearing. No notice was issued and served to the petitioners by the respondents for filing objections and for hearing the petitioners as required by Section 5-A of the Act. It is further argued by learned Counsel for the petitioners that recommendations/proposal sent by the Land Acquisition Officer does not inspire any confidence and learned Land Acquisition Officer has discriminated between the land owners. He has recommended to release the land in favour of some of the persons having construction on the land and have malafidely excluded the petitioners from the list of the persons, whose lands were left to be acquired on the ground that constructions are standing thereon. According to learned Counsel for the petitioners, classification of constructions in three categories i.e. A,

B and C is wrong and discriminatory. Land having constructions of A category was left out from the acquisition while of B and C category construction was acquired illegally. It is further argued by learned Counsel for the petitioners that no Site Selection Committee was ever formulated and report of the learned Land Acquisition Officer submitted under Section 5-A of the Act was blindly accepted without any speaking order. It is further argued that it was incumbent on the part of the State Government to consider the report of the Land Acquisition Officer submitted under Section 5-A of the Act in right perspective and State Government must record its satisfaction after considering all material available on the record before forming the opinion to acquire land under Section 6 of the Act, which was not done in the present case.

(6) Mr. Deepak Girotra, A.A.G. Haryana, refuted the arguments of the petitioners and states that learned Land Acquisition Officer after making the spot inspection submitted its recommendations not to acquire the land of the people who are having A class constructions over the land. Land having B and C Class constructions was rightly acquired. State Government has decided to acquire the land on the basis of the report of the Land Acquisition Officer,—*vide* order dated 5th March, 1990.

(7) From the rival contentions raised by learned Counsel appearing for the parties, this Court finds that in the present matter two questions are required to be considered i.e. :

- (i) As to whether making classification of constructions into three categories i.e. A, B and C and thereafter leaving A-type construction from the acquisition and acquiring land having B and C type constructions is discriminatory, arbitrary, unjustified and is in violation of Article 14 of the Constitution of India ?
- (ii) As to whether non-consideration of report of Land Acquisition Officer submitted u/s 5-A of the Act in right perspective vitiate the notification u/s 6 of the Act ?

(8) **Question No. (i) :** As to whether making classification of constructions into three categories i.e. A, B and C and thereafter leaving A-type construction from the acquisition and acquiring land having B and C type constructions is discriminatory, arbitrary, unjustified and is in violation of Article 14 of the Constitution of India ?

(9) Question raised is no more '*Res integra*'. Hon'ble Apex Court has replied this question in **Sube Singh's** case.

(10) Judgment of Hon'ble the Apex Court in the case of **Sube Singh versus State of Haryana (1)** can be pressed in service while answering the question No. (i).

(11) The Hon'ble Apex Court in the matter of Sube Singh (*supra*) in paragraph No. 10 has held as under :—

“10. In the counter and the note of submission filed on behalf of the appellants it is averred, *inter alia*, that the Land Acquisition Collector on considering the objections filed by the appellants had recommended to the State Government for exclusion of the properties of Appellants 1 and 3 to 6 and the State Government had not accepted such recommendations only on the ground that the constructions made by the appellants were of 'B' or 'C' Class and could not be easily amalgamated into the developed colony which was proposed to be built. There is no averment in the pleadings of the respondents stating the basis of classification of structures as 'A', 'B' and 'C' Class, nor is it stated how the amalgamation of all 'A' Class structures was feasible and possible while those of 'B' and 'C' Class structures was not possible. It is not the case of the State Government and also not argued before us that there is no policy decision of the Government for excluding the lands having structures thereon from acquisition under the Act. Indeed, as noted earlier, in these cases the State Government has accepted the request of some landowners for exclusion of their properties on this very ground. It remains to be seen whether the purported classification of existing structures into 'A', 'B' and 'C' Classes is a reasonable classification having an intelligible differentia and a rational basis germane to the purpose. If the State Government fails to support its action on the touchstone of the above principle, then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes

both residential and commercial purposes. That being the purpose of acquisition, it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of 'A' Class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the lands proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with RC roofing, mosaic flooring etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellants could not be amalgamated into the plan."

(12) In the present case also, learned Land Acquisition Collector has classified constructions standing on the land subject matter of notification u/s 4 of the Act into three categories i.e. A, B and C. A perusal of the report of D.U.E. dated 2nd March, 1990 reveals that he has recommended to spare 'A' type construction from the acquisition and recommended to acquire all the constructions of 'B' and 'C' type even if they were raised prior to the notification under Section 4 of the Act. The Hon'ble Apex Court in the matter of Sube Singh (*supra*) has observed that classification of the constructions under 'A', 'B' and 'C' category is arbitrary and unjustified.

(13) Undisputedly, over most part of the land which was proposed to be acquired under Section 4 of the Act several constructions were standing at the time of notification issued under Section 4 of the Act, sparing the land whereupon A type construction are standing and acquiring the land where B and C type constructions are standing itself is in violation of the Article 14 of the Constitution of India. Action of the State Government is arbitrary, unjust and discriminatory. Question No. (i) is answered accordingly in favour of the petitioners.

(14) **Question No. (ii)** : As to whether non-consideration of report of Land Acquisition Officer submitted u/s 5-A of the Act in right perspective vitiate the notification u/s 6 of the Act ?

(15) The Hon'ble Apex Court in the matter of **Union of India and others versus Mukesh Hans (2)** in paragraph Nos. 25 and 35. has held as under :—

“25. Section 5-A contemplates a right of hearing to any person interested in the land and provides for filing of objections which objections will have to be heard by the authorised officer by providing an opportunity of hearing to such interested persons. As noted above, the reports submitted after this inquiry may not be binding on the appropriate Government but the same is necessary to be considered by the appropriate Government at the same time the report cannot be left out of consideration.

35. At this stage, it is relevant to notice that the limited right given to an owner/person interested under Section 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed under Section 17(4) of the Act. The object and importance of Section 5-A inquiry was noticed by this Court in the case of **Munshi Singh versus Union of India** reported in (1973) 2 S.C.C. 337 wherein this Court held thus :

“7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. The legislature has, therefore, made complete provisions for the persons interested to file objections against the

proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A :—

(16) The Hon'ble Apex Court in the matter of **Hindustan Petroleum Corporation Limited versus Darius Shapur Chennai** (3) in paragraph Nos. 8, 9, 15, 16, 19 and 20 has held as under :—

- “8. *The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also to the purpose and in this regard ordinarily, the jurisdiction of the court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5-A and 6 of the Act must be read jointly. The court in a case, where there has been total non-compliance or substantial non-compliance with the provisions of Section 5-A of the Act, cannot fold its hands and refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be conclusive evidence. But when the decision-making process itself is in question, the power of judicial review can be exercised by the court in the event the order impugned suffers from well-known principles viz. illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.*
9. *It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability there of must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5-*

A of the Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a fundamental right.

15. Section 5-A of the Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate Government in respect of the land which is the subject-matter of notification under section 4(1) of the Act. The said report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a report together with the records of the case, the Government is to render a decision thereupon. It is now well settled in view of a catena of decisions that the declaration made under Section 6 of the Act need not contain any reason.
16. However, considerations of the objections by the owner of the land and the acceptance of the recommendations by the Government, it is trite, must precede a proper application of mind on the part of the Government. As and when a person aggrieved questions the decision-making process, the court in order to satisfy itself as to whether one or more grounds for judicial review exist, may call for the records whereupon such records must be produced. The writ petition was filed in the year 1989. As noticed hereinbefore, the said writ petition was allowed. This Court, however, interfered with the said order of the High Court and remitted the matter back to it upon giving an opportunity to the parties to raise additional pleadings.
19. Furthermore, the State is required to apply its mind not only on the objections filed by the owner of the land but also on the report which is submitted by the Collector upon making other and further enquiries therefore as also the

recommendations made by him in that behalf. The State Government may further inquire into the matter, if any case is made out therefore, for arriving at its own satisfaction that it is necessary to deprive a citizen of his right to property. It is in that situation that production of records by the State is necessary.

20. In *Gurdip Singh Uban* whereupon Mr Ramamoorthy placed strong reliance, this Court observed :

“50. No reasons or other facts need be mentioned in the Section 6 declaration on its face. If the satisfaction is challenged in the court, the Government can show the record upon which the Government acted and justify the satisfaction expressed in the Section 6 declaration.”

It was, thus, for the State to justify its action by production of record or otherwise.”

(17) From the perusal of judgments of the Hon'ble Apex Court in the matter of *Union of India (supra)* and *Hindustan Petroleum Corpn. Limited (supra)*, I have no doubt in my mind to observe that State is required to apply its mind not only on the objections filed by the owners of the land but also on the report and record of proceedings submitted by the Land Acquisition Collector under Section 5-A of the Act. State Government may hold further inquiry into the matter after any case is made out, before recording its satisfaction for acquisition of the land. Section 5-A of the Act confers a valuable important right in favour of land owner. As observed by the Apex Court in para 9 of *Hindustan Petroleum Corpn. Limited (supra)* rights of the land owner are akin to fundamental right as per provision of Article 300-A of the Constitution of India. Consideration of the objections of the owners of the land and the recommendations made by the Land Acquisition Collector to the State Government must be by way of proper application of mind and when a person aggrieved questions the decision-making process, the Court in order to satisfy itself may call for the record.

(18) In the present case, original record was called. Learned Counsel for the State also produces photocopies of the relevant documents. I have gone through the original record with the help of both the counsel and Mr. Suresh Chahal, Land Acquisition Collector, present in person in the Court.

(19) Learned Comptroller Town and Country Planning (CTCP) on 5th March, 1990 while considering the objections of the land owners and recommendations made by the Land Acquisition Officer has observed as under :—

“To depend totally upon LAO’s report is neither advisable nor desirable. DUE should have constituted a Site Selection Committee to report on the quality of construction of various structures. Now, there is no time left to do so.

2. As proposed by DUE.

(Sd.) . . .
C.T.C.P.
5.3.90

(Sd.) . . .
Dy. CM.
5.3.90

D.U.E.

(Sd.) . . .
D.U.E.
6.3.90

Government of Haryana”

(20) The Hon’ble Deputy Chief Minister of the State also agreed with the view of the CTCP as observed above and thereafter notification under Section 6 of the Act dated 7th March, 1990 was issued on the basis of order dated 5th March, 1990.

(21) Order dated 5th March, 1990, as has been reproduced herein before, reveals that observation made by learned CTCP is self contradictory. At one place, CTCP is observing that to depend totally upon the report of Land Acquisition Officer is neither advisable nor desirable and DUE

should have constituted a Site Selection Committee to report on the quality of construction of various structures and at another place without recording any satisfaction on the report of Land Acquisition Officer and without any further inquiry which could have been held observed "as proposed by DUE". In the opinion of this Court, order dated 5th March, 1990 which is basis for issuing the notification under Section 6 of the Act is a outcome of non-application of mind and no satisfaction was recorded by the appropriate Government on the recommendation made by the Land Acquisition Officer. This Court has absolutely no hesitation to hold that action on the part of CTCPC and Hon'ble Deputy Chief Minister while accepting the recommendation of the Land Acquisition Officer was totally irresponsible and in violation of the object of Sections 5-A and 6 of the Act. If State wants to deprive a citizen from his property then due process of law should be adhered to. This Court is conscious about the fact that while recording satisfaction on the report or the recommendation of the Land Acquisition Collector, no reasoning is required to be given, however, record must show that proper mind was applied by the appropriate Government before accepting the recommendation which is lacking in the present case. It is important to mention herein that notification under Section 4 of the Act was issued on 8th March, 1989 and notification under Section 6 of the Act was issued on 7th March, 1990 i.e. on the last date of limitation. Order dated 5th March, 1990 also reveals that because limitation to issue Section 6 notification was going to expire, hence, hasty decision was taken thereon by making self contradictory observations.

(22) In view of above, notification under Sections 4 and 6 of the Act cannot stand in legal scrutiny. Question No. (ii) is answered accordingly.

(23) This Court *vide* order dated 11th May, 1990 has stayed the dispossession of the petitioners from the property in dispute which is still in force. Petitioners are still in possession. Petition is pending for last twenty years, hence, the then alleged public purpose to acquire land must have come to an end.

(24) Hence, writ petition is allowed. Impugned notifications dated 8th March, 1989 (Annexure P-2) and 7th March, 1990 (Annexure P-3) under Sections 4 and 6 of the Land Acquisition Act respectively are hereby quashed. No order as to costs.

R. N. R.